

Baxley, Mike

From: Wenick, George <gdwenick@smithcurrie.com>
Sent: Wednesday, July 15, 2015 3:07 PM
To: Baxley, Mike
Cc: BYRNE, STEPHEN A; BYNUM, ALVIS J JR; LINDSAY, RONALD; Crosby, Michael; Pelcher, Steve
Subject: Re: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

Mike,

Suits me.

George

Sent from my iPhone

On Jul 15, 2015, at 2:36 PM, Baxley, Mike <mike.baxley@santeecooper.com<mailto:mike.baxley@santeecooper.com>> wrote:

George, thank you for your email on how we structure Bechtel's engagement. You raise some very good points. It is my understanding the Owner CEO's met with Bechtel earlier this week and there is some change in previous thinking on this, away from the litigation potential towards open disclosure of findings among the parties. My suggestion at this point is two fold. First, we schedule an internal phone call among the Owners' lawyers to finalize details. Then, we arrange a meeting between all lawyers, including Bechtel, to get this straight among the entire group. Otherwise, I suspect there will be inordinate delay in getting the contract completed. Would you be agreeable to this?

Mike Baxley

Begin forwarded message:

From: "Wenick, George" <gdwenick@smithcurrie.com<mailto:gdwenick@smithcurrie.com>>
Date: July 14, 2015 at 9:14:15 AM EDT
To: "Baxley, Mike" <mike.baxley@santeecooper.com<mailto:mike.baxley@santeecooper.com>>, "BYRNE, STEPHEN A" <SBYRNE@scana.com<mailto:SBYRNE@scana.com>>, "BYNUM, ALVIS J JR" <ABYNUM@scana.com<mailto:ABYNUM@scana.com>>, "LINDSAY, RONALD" <RONALD.LINDSAY@scana.com<mailto:RONALD.LINDSAY@scana.com>>
Cc: "Crosby, Michael" <michael.crosby@santeecooper.com<mailto:michael.crosby@santeecooper.com>>, "Pelcher, Steve" <stephen.pelcher@santeecooper.com<mailto:stephen.pelcher@santeecooper.com>>
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 Mike,

Your email raises the question of whether (1) we should obtain the Consortium's cooperation with Bechtel's assessment effort, or (2) we should protect Bechtel's work from forced disclosure in case of litigation. But I do not believe that is the dichotomy that we face.

My understanding is that the Consortium has not said that it would cooperate with the Bechtel assessment, if we would agree to provide it with a copy of the eventual report. And the Consortium is unaware of the current draft of the Bechtel

services agreement, so it could not have said that it would cooperate if we removed the reference to anticipated litigation in that agreement. Instead, the Consortium has provided us with an extremely restrictive non-disclosure agreement and stated that its cooperation was conditioned on our execution of the NDA. We cannot sign that NDA.

The Consortium's proposed NDA would restrict the uses to which we could eventually put the Bechtel report. For example, we would be prohibited from using Bechtel's conclusions in subsequent litigation. Thus, if Bechtel concluded that the Consortium grossly mismanaged a specific aspect of its work or schedule, we could not cite Bechtel for this conclusion. Moreover, the Consortium would be expected to argue that we could not even raise the issue, even if we do not cite Bechtel, on the grounds that we learned of the issue solely because of Bechtel's involvement and the Consortium's involvement. Unless the Consortium drops the demand that we executed the proposed NDA, we have no reason to modify the current draft of the Bechtel services agreement. If it eventually drops that demand, then the Owner can revisit the question of whether it will share the report with the Consortium.

I would like to add a word or two about the importance of protecting Bechtel's eventual report from disclosure, based on my experience in a similar matter. I was involved in litigation in the USDC for the Western District of Pennsylvania concerning a coal-fired power plant. During the course of construction but before litigation had begun, the opposing party hired an expert to evaluate my client's claims. We learned of the existence of the report and requested production, but the other party refused, contending that the report was privileged. We then successfully moved to compel production. The report in that case was highly favorable to my client, and its production quickly led to a settlement on highly favorable terms. The other side settled because it recognized that it would have a nearly impossible task if it attempted to persuade the fact finder to ignore the report. In short, the consultants hired by the other side effectively "decided" the dispute when it wrote its report, although the report was preliminary and prepared without the aid of discovery. The same could happen here, with the Bechtel report. We should give careful thought to whether we want to put Bechtel in the position of possibly deciding any eventual dispute, based on a seven week review.

George

From: Baxley, Mike [mailto:mike.baxley@santeecooper.com]
Sent: Monday, July 13, 2015 11:20 AM
To: BYRNE, STEPHEN A; BYNUM, ALVIS J JR; Wenick, George; LINDSAY, RONALD
Cc: Crosby, Michael; Pelcher, Steve
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

Gentlemen—

Michael Crosby has shared this internal email with me. I am concerned that hiring Bechtel through legal counsel, and certain phrases in the proposed agreement that Bechtel is hired "for the purpose of assisting counsel in giving legal advice to the owner" will result in failure of this initiative. Westinghouse and CBI will not cooperate if they see this as an effort to cultivate an expert witness, and this is not consistent with our initial discussions with the Consortium on this. We are sensitive to your concerns about disclosure, but definitely feel that the Owners need to be the hiring agency, and the report from Bechtel must be available to Westinghouse and CBI.

Can we delete that language?

Mike Baxley

Begin forwarded message:

From: "BYRNE, STEPHEN A" <SBYRNE@scana.com<mailto:SBYRNE@scana.com>>

Date: July 8, 2015 at 9:33:02 AM EDT

To: "BYNUM, ALVIS J JR" <ABYNUM@scana.com<mailto:ABYNUM@scana.com>>

Cc: "'Crosby, Michael'" <michael.crosby@santeecooper.com<mailto:michael.crosby@santeecooper.com>>, "ARCHIE, JEFFREY B" <JARCHIE@scana.com<mailto:JARCHIE@scana.com>>

Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 AI,

We held a kickoff meeting last week with SCE&G, Santee and Bechtel.

Redacted - Privileged

Redacted - Privileged

Steve

From: BYNUM, ALVIS J JR

Sent: Wednesday, July 08, 2015 9:09 AM

To: BYRNE, STEPHEN A

Subject: FW: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

Steve – **Redacted - Privileged** I don't know what went on in your meeting last week

From: Pelcher, Steve [mailto:stephen.pelcher@santeecooper.com]

Sent: Wednesday, July 08, 2015 9:03 AM

To: BYNUM, ALVIS J JR

Subject: FW: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

***This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

AI: I will defer to you on this. My calendar is presently open. Thanks. Steve

From: Daw, Martyn [mailto:mndaw@bechtel.com]

Sent: Wednesday, July 08, 2015 9:01 AM

To: Pelcher, Steve; Bynum, Alvis

Subject: Re: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

AI - Good day to you

Please are you available later today for a call to discuss where we are?

Thanks

Martyn

On Jun 29, 2015, at 6:22 PM, Daw, Martyn <mndaw@bechtel.com<mailto:mndaw@bechtel.com>> wrote:

Thanks Steve

AI – I look forward to hearing from you

Cheers
Martyn

From: Pelcher, Steve [mailto:stephen.pelcher@santeecooper.com]
Sent: Monday, June 29, 2015 1:09 PM
To: Daw, Martyn
Cc: Bynum, Alvis
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Martyn: I will defer to Al Bynum on suggesting a time for such a conversation.

Thanks.

Steve

From: Daw, Martyn [mailto:mndaw@bechtel.com]
Sent: Monday, June 29, 2015 12:13 PM
To: BYNUM, ALVIS J JR; Pelcher, Steve
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

Al/Steve – please can you let me know a good time for us to speak

Thanks
Martyn

From: Daw, Martyn
Sent: Wednesday, June 24, 2015 7:32 AM
To: 'BYNUM, ALVIS J JR'; 'Pelcher, Steve'
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Al/Steve – my business folk have requested an update as to the plan for getting the Purchase Order/contract in place.

I'm currently in the UK on business but can be available for a call at your convenience.

Please let me know

Thanks
Martyn

From: Daw, Martyn
Sent: Saturday, June 20, 2015 10:02 AM
To: 'BYNUM, ALVIS J JR'; 'Pelcher, Steve'
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Hi Al and Steve (and welcome back to Al from his trip to Asia)

I understand the green light has been given for the assessment. Shall we have a chat early next week about getting the Purchase Order/contract in place? We discussed previously that it would make sense just to use the terms of one of the existing contracts between SCE&G and Bechtel. We can be flexible on this.

It would be good to get the PO/contract in place before the kick-off meeting which I think is planned for July 1.

Thanks and look forward to hearing from you

Martyn

From: Daw, Martyn
Sent: Monday, June 01, 2015 6:42 PM
To: 'BYNUM, ALVIS J JR'; Pelcher, Steve
Cc: Cherry, Marion; Crosby, Michael; LINDSAY, RONALD; BYRNE, STEPHEN A; Albert, Craig
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Thanks very much, Al

Martyn

From: BYNUM, ALVIS J JR [mailto:ABYNUM@scana.com]
Sent: Monday, June 01, 2015 1:28 PM
To: Daw, Martyn; Pelcher, Steve
Cc: Cherry, Marion; Crosby, Michael; LINDSAY, RONALD; BYRNE, STEPHEN A; Albert, Craig
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Here is the signed O-1

From: Daw, Martyn [mailto:mndaw@bechtel.com]
Sent: Monday, June 01, 2015 1:10 PM
To: Pelcher, Steve; BYNUM, ALVIS J JR
Cc: Cherry, Marion; Crosby, Michael; LINDSAY, RONALD; BYRNE, STEPHEN A; Albert, Craig
Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

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Steve – thanks again to you and Al for the call this morning.

Attached is a pdf of the Proprietary Data Agreement signed by Bechtel Power Corporation. Please can Al or you let me know if you'd like me to send along the original with the wet signature.

I look forward to hearing from you/Al as to the path forward with respect to getting a PO in place. As I indicated on the phone, we are flexible on this and we are willing to be retained by your outside counsel if you believe that would be preferable.

On the documents side, I believe that Dick Miller will be point of contact for Bechtel but I am confirming this as I write.

Thanks again for the discussion this morning

Martyn

From: Pelcher, Steve [mailto:stephen.pelcher@santeecooper.com]

Sent: Monday, June 01, 2015 12:04 PM
 To: Daw, Martyn; Bynum, Alvis
 Cc: Cherry, Marion; Crosby, Michael; Lindsay, Ronald ; Byrne, Stephen A.; Albert, Craig
 Subject: RE: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3 [*EXTERNAL*]

Martyn/Al: It was great speaking with you this morning.

As a follow up to our conversation, I believe that the very first action item will be for Bechtel to send a partially executed copy of the Proprietary Data Agreement to Al Bynum for the Owner's countersignature. Please keep Santee Cooper in the loop so that Santee Cooper might have a fully executed copy of that agreement for our records.

Next up, regarding the documents that Bechtel will review as part of its assessment, Marion Cherry of Santee Cooper has been working with somebody at SCE&G in assembling the documents that will be reviewed. I have copied Marion on this Email. (Marion: Who have you been working with at SCE&G on assembling these documents?) My notes indicate that the Bechtel guy who will likely be the logistical link in receiving these documents is 'Dick Miller' but I may be mistaken about this. Note to Al: As a process point, we need to make sure anything that we share with Bechtel fits within the definition of "Contractor Discloseable Information" as that is defined in Section 19.3(b) of the EPC.

During the call, we discussed the possibility that Bechtel might be retained by George Wenick (Smith, Currie & Hancock LLC), if there is an advantage in doing so. Al Bynum will have a conversation with George about that later today, so that we might close that loop on that possibility.

Al mentioned that he will begin his annual vacation this Thursday, although that we should contact his boss, Ron Lindsay, should something come up while he is away.

Finally, we concluded our conversation with a discussion of the form of the Purchase Order the Owners would use to retain Bechtel (assuming Bechtel isn't retain by Smith Currie.) A suggestion was made that we might "re-purpose" an existing PO the Owners have Bechtel to provide licensing and engineering support. Al identified Kyle Nash as the guy at SCE&G would likely process this paperwork.

Thanks again for the good conversation.

Let's stay in touch.

Steve

-----Original Appointment-----

From: Pelcher, Steve
 Sent: Monday, June 01, 2015 9:28 AM
 To: Pelcher, Steve; Daw, Martyn ; Bynum, Alvis
 Subject: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3
 When: Monday, June 01, 2015 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
 Where: Dial-in Number: (877)635-0568<tel:(877)635-0568>; Participant Code: 8437614016

Date of Call: June 1, 2015
 Time of Call: 11:00AM<x-apple-data-detectors://47>

Duration of Call: 30 Minutes

Dial-in Number: (877)635-0568<tel:(877)635-0568;8437614016>

Participant Code: 8437614016<tel:(877)635-0568;8437614016>

Discuss:

1. Process for execution of "Proprietary Data Agreement."
2. Process of jump starting Bechtel's review of documents consistent with Proprietary Data Agreement and Section 19.3 of the EPC.
3. Process of Owners executing a PO with Bechtel.

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Mike Baxley

On Jul 14, 2015, at 9:15 AM, Wenick, George <gdwenick@smithcurrie.com<mailto:gdwenick@smithcurrie.com>> wrote:

Mike,

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 Sent: Monday, July 13, 2015 11:20 AM
 To: BYRNE, STEPHEN A; BYNUM, ALVIS J JR; Wenick, George; LINDSAY, RONALD
 Cc: Crosby, Michael; Pelcher, Steve
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 Cc: "Crosby, Michael" <michael.crosby@santeecooper.com<mailto:michael.crosby@santeecooper.com>>, "ARCHIE, JEFFREY B" <JARCHIE@scana.com<mailto:JARCHIE@scana.com>>
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Redacted - Privileged

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To: BYRNE, STEPHEN A
Subject: FW: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

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Sent: Monday, June 01, 2015 9:28 AM

To: Pelcher, Steve; Daw, Martyn ; Bynum, Alvis

Subject: Implementing Bechtel's Assessment of V.C. Summer Units 2 and 3

When: Monday, June 01, 2015 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Dial-in Number: (877)635-0568; Participant Code: 8437614016

Date of Call: June 1, 2015

Time of Call: 11:00AM

Duration of Call: 30 Minutes

Dial-in Number: (877)635-0568

Participant Code: 8437614016

Discuss:

1. Process for execution of "Proprietary Data Agreement."
2. Process of jump starting Bechtel's review of documents consistent with Proprietary Data Agreement and Section 19.3 of the EPC.
3. Process of Owners executing a PO with Bechtel.

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